

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review**

Discount Meat World,

Appellant,

v.

Case Number: C0205147

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to permanently deny the application of Discount Meat World (“Appellant”) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program.

ISSUE

The purpose of this review is to determine whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.1(k)(4), in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it permanently denied the application of Appellant to participate in SNAP on November 30, 2017.

AUTHORITY

According to 7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1, “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may . . . file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

In a letter dated November 30, 2017, the Retailer Operations Division permanently denied the application of Appellant to participate as an authorized retailer in SNAP in accordance with 7 CFR § 278.1(e)(1) and 7 CFR § 278.1(k). In concluding that Appellant should be permanently

denied authorization, the Retailer Operations Division determined that Appellant provided false information on a SNAP application.

On December 18, 2017, Appellant appealed the Retailer Operations Division decision and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(e)(1) establishes the authority upon which a firm may be permanently disqualified from participating in SNAP because the firm's application contains false information of a substantive nature.

7 CFR § 278.6(e)(1) states, in part:

FNS . . . shall [d]isqualify a firm permanently if . . . [i]t is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to . . . ownership of the firm

7 CFR § 278.1(k) states, in part:

FNS shall deny the application of any firm if it determines that . . . The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3)

APPELLANT'S CONTENTIONS

Appellant's responses regarding this matter are essentially as follows:

- Appellant took a personal loan to purchase the firm. The lender is not an owner of the firm; and,

- Appellant initially did not have all the required paperwork necessary for processing the application, but has now submitted all the required documents.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented, including any others that have not been specifically listed here.

In support of its contentions, Appellant provided the following documentation:

- A two-page affidavit;
- Appellant's driver's license;
- A deposit account balance summary;
- ~15 pages of documents concerning Appellant's corporate structure and ownership;
- An occupational tax registration certificate;
- A sales tax certificate;
- ~15 pages of lease documents; and,
- ~15 pages of promissory note documents.

ANALYSIS AND FINDINGS

Application Included False Information

With respect to Appellant's contentions, 7 CFR § 278.1(e)(1) requires the permanent disqualification of authorization of firms from continued participation in SNAP on the basis of a number of reasons, one of which is the submitting false information of a substantive nature on a SNAP application that could affect the eligibility of the firm for authorization in the program. Appellant contends it initially did not have all the required paperwork necessary for processing the application, but has now submitted all the required documents. Appellant was not denied for failure to submit documentation.

Appellant argues it took a personal loan to purchase the firm and the lender is not an owner of the firm. The evidence indicates that at the time of the November 30, 2017 application to become a SNAP retailer, the financing for the firm came from three individuals: Biswajit Roy, Partha Biswas, and Paltu Roy. On August 26, 2017, these three individuals loaned 5 U.S.C. § 552 (b)(6) & (b)(7)(C) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C) then purchased the firm from a third party for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on August 28, 2017. Paltu Roy was permanently disqualified as a SNAP retailer on August 16, 2013. Partha Biswas was permanently disqualified on April 22, 2014. Biswajit Roy was permanently disqualified on October 29, 2012. In an affidavit dated October 4, 2017, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) answered no when asked whether "Persons

who were owners or managers of any store that has been permanently disqualified from SNAP or WIC are financially involved or have other operational interest in this store.”¹

As previously mentioned, 7 CFR § 278.6(e) is specific in its requirement that:

FNS . . . shall [d]isqualify a firm permanently if . . . [i]t is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to . . . ownership of the firm

There is no agency discretion in the matter of what sanction is to be imposed when a false statement of a substantive nature is involved.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to deny the application of Discount Meat World to participate as an authorized retailer in SNAP is sustained. Denial of a firm’s authorization to participate in the SNAP under the provisions of 7 CFR § 278.1(e)(1) is permanent.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If Appellant desires a judicial review, the complaint must be filed in the U.S. District Court for the district in which Appellant’s owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

RICH PROULX
Administrative Review Officer

January 29, 2018

¹ On review, Appellant provided this same affidavit with the “no” answer apparently whited out and the “yes” box checked.